

assurances in your contracts with them.

(e) It is not a defense to an enforcement action under this Part that your noncompliance resulted from action or inaction by a contractor or U.S. travel agent.

**§ 39.25 May PVOs refuse to provide transportation or use of a vessel on the basis of disability?**

(a) As a PVO, you must not refuse to provide transportation or use of a vessel to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this Part.

(b) You must not refuse to provide transportation or use of a vessel to a passenger with a disability because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) If you refuse to provide transportation or use of a vessel to a passenger on a basis relating to the individual's disability, you must provide to the person a written statement of the reason for the refusal. This statement must include the specific basis for your opinion that the refusal meets the standards of § 39.27 or is otherwise specifically permitted by this part. You must provide this written statement to the person within 10 calendar days of the refusal of transportation or use of the vessel.

**§ 39.27 Can a PVO take action to deny transportation or restrict services to a passenger with a disability based on safety concerns?**

(a) As a PVO, you may take action to deny transportation or restrict services to a passenger with a disability if necessitated by legitimate safety requirements. Safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

*Example 1 to paragraph 39.27(a):* You may take such action in order to comply with Coast Guard safety regulations.

*Example 2 to paragraph 39.27(a):* You may take such action if accommodating a large or heavy wheelchair would, together with its occupant, create weight and balance problem that could affect adversely the seaworthiness

of the vessel or impede emergency egress from the vessel.

*Example 3 to paragraph 39.27(a):* You could restrict access to a lifeboat for a mobility device that would limit access to the lifeboat for other passengers.

(b) In taking action pursuant to legitimate safety requirements, you must take the action that imposes the minimum feasible burdens or limitations from the point of view of the passenger. For example, if you can meet legitimate safety requirements by a means short of refusing transportation to a passenger, you must do so.

(c) You may take action to deny transportation or restrict services to a passenger if the passenger poses a direct threat to others. In determining whether an individual poses a direct threat to the health or safety of others, the PVO must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

**§ 39.29 May PVOs limit the number of passengers with a disability on a passenger vessel?**

As a PVO, you must not limit the number of passengers with a disability other than individuals with a mobility disability on your vessel. However, if in the Captain's judgment, weight or stability issues are presented by the presence of mobility devices and would conflict with legitimate safety requirements pertaining to the vessel and its passengers, then the number of passengers with mobility aids may be limited, but only to the extent reasonable to prevent a avoid such a conflict.

**§ 39.31 May PVOs limit access to transportation or use of a vessel on the basis that a passenger has a communicable disease?**

(a) You must not take any of the following actions on the basis that a passenger has a communicable disease or infection, unless one of the conditions of paragraph (b) of this section exists:

### § 39.31

(1) Refuse to provide transportation or use of a vessel to the passenger;

(2) Delay the passenger's transportation or use of the vessel (*e.g.*, require the passenger to take a later trip);

(3) Impose on the passenger any condition, restriction, or requirement not imposed on other passengers; or

(4) Require the passenger to provide a medical certificate.

(b) You may take actions listed in paragraph (a) of this section only if either or both of the conditions listed in paragraphs (b)(1) and (2) of this section are met. The action you take must be the least restrictive from the point of view of the passenger, consistent with protecting the health of other passengers.

(1) U.S. or international public health authorities (*e.g.*, the Centers for Disease Control, Public Health Service, World Health Organization) have determined that persons with a particular condition should not be permitted to travel or should travel only under conditions specified by the public health authorities;

(2) An individual has a condition that is both readily transmissible by casual contact in the context of traveling on or using a passenger vessel and has serious health consequences.

*Example 1 to paragraph 39.31(b)(2).* A passenger has a common cold. This condition is readily transmissible by casual contact but does not have serious health consequences. You may not take any of the actions listed in paragraph (a) of this section.

*Example 2 to paragraph 39.31(b)(2):* A passenger has HIV/AIDS. This condition is not readily transmissible by casual contact but does have serious health consequences. You may not take any of the actions listed in paragraph (a) of this section.

*Example 3 to paragraph 39.31(b)(2):* A passenger has SARS or a norovirus. These conditions are readily transmissible by casual contact and have serious health consequences. You may take an action listed in paragraph (a) of this section.

*Example 4 to paragraph 39.31(b)(2).* A passenger has a condition that is not readily transmissible by casual contact to or does not have serious health consequences for the general passenger population. However, it is possible that it could be readily transmitted by casual contact with and have serious health consequences for an individual with a severe allergy or severely compromised immune system. You may not take any of the

### 49 CFR Subtitle A (10–1–10 Edition)

actions listed in paragraph (a) of this section.

(c) Any action of those listed in paragraph (a) of this section that you take under paragraph (b) of this section must be the least drastic action you can take to protect the health of other passengers. For example, if you can protect the health of other passenger by imposing a condition on the transportation of a passenger with a communicable disease (*e.g.*, limiting the passenger's access to certain facilities on the vessel for a period of time), you cannot totally deny transportation on the vessel.

(d) For purposes of paragraph (a)(4) of this section, a medical certificate is a written statement from the passenger's physician saying that the passenger's disease or infection would not, under the present conditions in the particular passenger's case, be readily communicable to other persons by casual contact during the normal course of the passenger's transportation or use of the vessel. Such a medical certificate must state any conditions or precautions that would have to be observed to prevent the transmission of the disease or infection to other persons in the normal course of the passenger's transportation on or use of the vessel. It must be sufficiently recent to pertain directly to the communicable disease presented by the passenger at the time the passenger seeks to board the vessel.

(e) If your action under this section results in the postponement of a passenger's transportation or use of the vessel, you must permit the passenger to travel or use the vessel at a later available time (up to one year from the date of the postponed trip or use of the vessel) at the cost that would have applied to the passenger's originally scheduled trip or use of the vessel without penalty or, at the passenger's discretion, provide a refund for any unused transportation or use of the vessel. If there is no available reservation within one year, you must provide a refund.

(f) If you take any action under this section that restricts a passenger's transportation or use of the vessel, you

must, on the passenger's request, provide a written explanation within 10 days of the request.

**§ 39.33 May PVOs require a passenger with a disability to provide a medical certificate?**

Except as provided in § 39.31, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation on your vessel.

**§ 39.35 May PVOs require a passenger with a disability to provide advance notice that he or she is traveling on or using a passenger vessel when no particular services are sought?**

As a PVO, you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on or using a passenger vessel when the passenger is not seeking particular auxiliary aids or services, or special privileges or services, that in order to be provided need to be arranged before the passenger arrives to board the vessel. The PVO always has an obligation to provide effective communication between the PVO and individuals who are deaf or hard of hearing or blind or visually impaired through the use of appropriate auxiliary aids and services.

**§ 39.37 May PVOs require a passenger with a disability to provide advance notice in order to obtain particular auxiliary aids and services or to arrange group travel?**

(a) Except as provided in this section, as a PVO you must not require a passenger with a disability to provide advance notice in order to obtain services or privileges required by this Part.

(b) If 10 or more passengers with a disability seek to travel as a group, you may require 72 hours advance notice for the group's travel.

(c) With respect to providing particular auxiliary aids and services, you may request reasonable advance notice to guarantee the availability of those aids or services.

(d) Your reservation and other administrative systems must ensure that when passengers provide the advance notice that you require, consistent with this section, for services and privileges, the notice is communicated,

clearly and on time, to the people responsible for providing the requested service or accommodation.

**§ 39.39 How do PVOs ensure that passengers with disabilities are able to use accessible cabins?**

(a) As a PVO operating a vessel that has accessible cabins, you must follow the requirements of this Part to ensure that passengers with disabilities who need accessible cabins have non-discriminatory access to them.

(b) You must, with respect to reservations made by any means (*e.g.*, telephone, Internet, in person, or through a third party):

(1) Modify your policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible cabins during the same hours and in the same manner as individuals who do not need accessible cabins;

(2) Identify and describe accessible features in the cabins offered through your reservations service in enough detail to permit individuals with disabilities to assess independently whether a given cabin meets his or her accessibility needs.

(3) Ensure that accessible cabins are held for use by individuals with disabilities until all other cabins in that class of service have been rented;

(4) Reserve accessible cabins upon request by a passenger with disabilities and ensure that the specific accessible cabin reserved by that passenger is held for him or her, even you do not normally hold specific cabins for passengers who make reservations.

(c) You may release unsold accessible cabins to persons without disabilities for their own use when all other cabins in the same class of service and price for a voyage have been reserved.

(d) If a passenger with a disability seeks to reserve an accessible cabin in a given class of service, and there is not an available accessible cabin in that class of service, but there is an available accessible cabin in a different class of service, you must allow the passenger to reserve that accessible cabin at the price of the requested class of service of the class of service in which the accessible cabin exists, whichever is lower.